JD(NY)-31-10
Bay Shore, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

SOUTHSIDE HOSPITAL

and **Case No. 29-CA-29806**

NEW YORK STATE NURSES ASSOCIATION

***Linda Harris Crovella, Esq.,* Brooklyn, NY, for the General Counsel.**
***Mark A. Gloade, Esq.,* North Shore Long Island Jewish Health System, Great Neck, NY, for the Respondent.**
***Denis P. Duffey, Jr., Esq. (Spivak, Lipton, LLP),* New York, NY, for the Union.**

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge filed by the New York State Nurses Association (Union) on September 1, 2009, a complaint was issued on January 29, 2010 against the Southside Hospital/North Shore Long Island Jewish Health System. (Respondent or Employer).[1]

The complaint alleges essentially that the Respondent, which has a collective-bargaining relationship with the Union, prohibited its employees from wearing union buttons in violation of Section 8(a)(1) of the Act. The complaint further alleges that the subject of wearing union buttons is a mandatory subject for the purposes of collective bargaining and that, by prohibiting its employees from wearing union buttons, it imposed a dress code without prior notice to the Union, and without affording it an opportunity to bargain regarding such actions in violation of Section 8(a)(5) of the Act.

The complaint also alleges that the Respondent unlawfully directed employees not to talk about Union affairs, while at no time has it maintained a valid rule prohibiting talking or solicitation.

The Respondent's answer denied the material allegations of the complaint and on May 4, 2010, a hearing was held before me in Brooklyn, New York.[2] On the entire record, including

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[1] At the hearing, the name of the Respondent was amended to Southside Hospital.

[2] Pursuant to a procedure agreed upon at the hearing, the Respondent, following the close of the hearing, served a document identified as Respondent's Exhibit 2, its "Personal Appearance Policy" which was in effect at the time of the matters at issue here. The General Counsel and Charging Party objected to the exhibit on the grounds of relevance. I received it in evidence. ALJ Exhibit 1.

my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[3]

Findings of Fact

I. Jurisdiction and Labor Organization Status

The Respondent, a domestic corporation, has its principal office and place of business at 301 East Main Street, Bay Shore, New York, where it operates an acute care hospital providing inpatient and outpatient medical care. The hospital has about 350 beds and employs about 600 registered nurses. The Employer also provides managerial, clinical and other services to the Brentwood Family Health Center, an outpatient facility operated by the County of Suffolk, located at 1869 Brentwood Road, Brentwood, New York. The Employer employs 20 to 25 registered nurses at Brentwood, and the County employs about 15 registered nurses at that location.

During the past twelve months, the Respondent derived gross revenues in excess of $250,000, and purchased and received at its two facilities, goods, products and materials valued in excess of $5,000 directly from points located outside New York State. The Respondent admits and I find that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that it has been a healthcare institution within the meaning of Section 2(14) of the Act.

The Respondent also admits and I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. Background

The Respondent admits that the Union has been the designated exclusive collective-bargaining representative of the following appropriate bargaining unit as set forth in its collective-bargaining agreement:

> Each full-time, part-time and per diem employee, licensed or otherwise lawfully entitled to practice as a registered professional nurse employed by Southside Hospital in the titles of Staff Nurse, Assistant Head Nurse, Head Nurse, Nurse Anesthetist, Staff Development Educator/Instructor, Nurse Clinician, Clinical Care Coordinator, and Infection Control Nurse, including employees in these titles at the Brentwood and Central Islip Family Health Centers, excluding the Director of Nursing, the Director of Staff Development, Assistant Director of Nursing, Nurse Manager, Assistant Nurse Manager, Supervisors, Assistant Supervisors or temporary employees as defined herein and all other job classifications as provided in Section 4.05.

[3] The General Counsel's unopposed Motion to Correct the Transcript is granted, with certain material errors being corrected herein, except that "regalia" on page 12, line 23 shall not be changed to "insignia" as requested by the General Counsel.

A contract between the parties ran from March 1, 2006 to February 28, 2009. Bargaining for a new agreement, which began in about November, 2008, was lengthy and "acrimonious." The parties bargained at about 28 sessions over 14 months. The Respondent and the Union reached a tentative agreement in early December, 2009 which was rejected by the Union membership. Following mediation sessions, the Employer made a "last, best and final" offer in early January, 2010 which was also rejected. The Respondent implemented that offer in late January, 2010.

B. The Alleged Ban on Union Buttons

1. Past Practice Regarding the Wearing of Buttons or Pins

a. Union Buttons

Historically, for at least a number of years before May, 2009, the Employer's nurses have worn buttons of all types, described below, including Union buttons and other buttons publicizing cancer awareness, supporting presidential candidates, and buttons distributed by the Employer. The nurses wore these buttons while on duty throughout the hospital, in patient care and nonpatient care areas, without restriction or prohibition until May, 2009.

A number of Union buttons have been worn by the nurses for years prior to the start of the November, 2008 negotiations. They include a 1¾" diameter pin with the legend "Proud to be an RN – New York State Nurses Association," and a 1½" button with the legend "No Givebacks – NYSNA." Both buttons were also worn in the current campaign. In June, 2008, Union representative Joan Sommermeyer gave out a 1¾" pin which said "Respect – NYSNA."

In April or May, 2009, when, according to Sommermeyer, the nurses were "really fighting for our healthcare," she distributed, and the nurses wore, a 2¼" pin which said "Hands off our benefits - NYSNA RNs." This pin was apparently prompted by the Respondent's request for "significant givebacks" and its demand that the Union's health benefit plan be replaced by an Employer plan, and also by the Respondent's proposed changes in flex-scheduling and pension benefits. Another 1¾" pin issued by the Union and worn at the time said "Patients BEFORE Profits – NYSNA."

In about May and June, 2009, the Union publicly displayed its displeasure with the course of bargaining by conducting a two-hour informational picket on about June 11, 2009 at which it displayed a large inflated rat at the hospital entrance, running radio and television advertisements, and engaging a small airplane to fly over two hospital-sponsored events with a banner reading "Southside nurses deserve a fair contract."[4]

Virginia Meyers, an employee clinical care coordinator, was a member of the Union's executive committee and co-president of the bargaining unit. As co-president, she represented the nurses at disciplinary meetings and distributed Union pins and flyers, and provided the nurses with updates on the negotiations.

Meyers stated that in 2009, she wore on her uniform coat lapels, and distributed to other

[4] Garlic, silver bullets and crucifixes were placed on the bargaining table by a Union member who sought to demonstrate how she believed she was treated by the Employer. This was apparently a reference to items used to repel the fictional Count Dracula. At the Employer's request, those items were removed from the table.

nurses the following buttons, described above: Respect, Hands off our benefits, Patients before profits, No Givebacks, and Proud to be an RN. She stated that she wore the “hands off” button when she was in patient care areas, and had not been told to remove that button or any others. She removed it and the other buttons specific to the negotiations such as “hands off, no givebacks and patients before profits” following the conclusion of contract negotiations. She continues to wear the “proud to be an RN” and “Respect” buttons.

b. Other Buttons

Nurses Meyers and Elizabeth (Betty) Busch-Joss testified that, in addition to Union buttons, they wore personal pins promoting breast and ovarian cancer awareness.

Nurses Busch-Joss, Madeline Maniscalco, and Linda Umlauf have seen other nurses, while on duty prior to the presidential election in November, 2008, wearing political pins supporting the presidential candidates. Umlauf stated that she had not heard of anyone being told to remove their political buttons.

Maniscalco also saw nurses and managers wearing a 3” “Strive for 5” pins, distributed by the Employer, which refer to the highest score that could be awarded by patients when assessing hospital services. Other pins distributed by the Employer include breast cancer and heart disease awareness buttons. Jodi DiCostanzo, the department director for cardiac services, denied that her managers wore the “Strive for 5” buttons. The Employer also distributed a 2½” button which stated “Southside Hospital Nurses are ‘Hard Core’ when it comes to Measures!” Nurses wore that button but when the Union complained about the button it was “recalled” by the Respondent.

Thus, it is undisputed that prior to May, 2009, the Employer did not prohibit the wearing of Union buttons of any type, or the wearing of any other buttons or pins in any areas of the Hospital while employees were on duty.

2. Hospital Directors’ Meeting and Orders to Remove the Buttons

Kathleen Cappellino, the director of the dialysis unit, testified that the wearing of buttons was discussed at a meeting of the hospital’s directors in about early June, 2009, at which it was agreed that the “hands off” button “could make the patient uncomfortable with the setting in which they were receiving their health care.” However, none of the directors said that they had received complaints from patients regarding that button. Director DiCostanzo testified that she did not receive any such complaints. According to Cappellino, “it was a matter of just concerns about patient perception.” Cappellino also personally believed that the “hands off” button “could be upsetting to the patients” and for that reason told the nurses to remove it. She noted that she prohibited the wearing of the button based on her “perception” of what the patients would feel – she was looking out for the patients’ interests. She admitted, however, that no patients had complained to her about that button, but she noted that the buttons had only recently been worn, implying that the patients had not yet had an opportunity to complain. Cappellino had no complaint about the “respect” button because “everyone wants, offers, and values respect.”

Nurse LeeAnn Mucci testified that in early June, 2009 she was sitting in the hospital cafeteria having breakfast, and wearing the "respect” and “hands off” buttons. She observed two administrators, Heather Lewis, the director of neurology, and Kathy Devlin, looking at her buttons as they walked through the cafeteria. Although nothing was said, Mucci felt an air of “tension.” Later that day, she was in the staff lounge or break room having lunch. The lounge is on the same floor as the cardiology department, but “away from” the labs and the patient care

area. It contains tables, a refrigerator, microwave oven, coffee pot and a couch. DiCostanzo, Mucci's supervisor, entered the lounge and said "Oh no, oh no, you can't wear that button here in a patient care area."

Later that day, Mucci told Union agent Sommermeyer what happened. Sommermeyer told her to remove the button and Mucci took off the "hands off" button. Mucci testified that, although she was not told by DiCostanzo which button to remove, she believed that the "hands off" button was the one that was objectionable because it was the only pin she had not been wearing for a long time, and thus had a "very strong suspicion that that was the button that was causing the stir." In fact, she had begun wearing it only within the past one or two weeks. She did not wear that pin after that time. She continued to wear the other buttons, including a pin with a heart for women's cardiac awareness and another pin related to electrophysiology, given to her by the Employer.

Sommermeyer stated that she called Anthony Lumia, the Respondent's manager of employee and labor relations, telling him that the Employer was violating employee rights by demanding that the nurses remove the buttons. Lumia spoke loudly in reply, stating that "the buttons were not union insignia. [The nurses] didn't have a right to wear the buttons."

Nurse Maniscalco wore the "proud to be an RN" button prior to the start of contract negotiations in November, 2008. When bargaining began, she wore the "respect" button, and in about May, 2009, she began wearing the "hands off our benefits" pin, as did other nurses. Maniscalco stated that she has worn various Union buttons every day while on duty in patient care areas since she began work in 2001, and had never been told to remove any of them until May or June, 2009, as set forth below.

Maniscalco testified that in late May or early June, 2009, she was sitting on a couch in the lounge, having just returned from lunch, and preparing to return to work. As she was talking to Mucci and other co-workers, DiCostanzo entered and said "no, you can't wear those buttons," pointing in her direction to the "hands off our benefits button" which she was wearing on her left upper chest area. Maniscalco replied "Is that legal or is that allowed? Isn't that a violation of our rights?" DiCostanzo answered that she "didn't want us to be wearing the buttons in the patient care areas." Maniscalco removed the "hands off" button, but continued to wear the other buttons. At the time, Maniscalco was speaking with two District 1199 nurses who wore two buttons, one which said "POP" – "protect our pension" and another reading "save our pension." DiCostanzo did not tell them to remove those buttons.

About one month later, in late June or early July, Maniscalco resumed wearing the "hands off button." She stated that assistant director of patient care services Joan Muller approached her in the "holding area" which is the initial patient contact area where the nurses prepare the patients for their procedures and where they recover from their procedures. Muller pointed at the button and said "you're not supposed to be wearing that. Maniscalco asked "which one?" Muller smiled, shook her head and left. Maniscalco did not remove the button.

Muller testified that she observed Maniscalco's numerous buttons which were "very visible" and were "all over her shirt" covering her chest. She did not read any of the pins, but told Maniscalco "that's quite a lot of buttons, and it doesn't look very nice." At hearing, Muller stated that she was not concerned with the message on the pins. Rather, she was concerned only with "the number of buttons" she was wearing. She did not ask Maniscalco to remove any of them.

Maniscalco stated that the following day, her manager, Dan Governanti, entered a room where she was performing a medical procedure on a patient and informed her that DiCostanzo

wanted to speak to her in her office, possibly about one of her buttons. Governanti relieved Maniscalco and she went to the office where DiCostanzo said that she "could not be wearing the 'hands off our benefits' button. I needed it to be taken off." Maniscalco replied that she has observed nurses "throughout the hospital wearing their buttons. They haven't been asked to take them off. So how could you ask one or two people in a specific department to remove theirs? Isn't that disparate treatment?" DiCostanzo answered that "nobody should be wearing them. It is inflammatory." Maniscalco replied "I thought the 'patients before profits' was more inflammatory." DiCostanzo said "no, they believed the 'hands off our benefits' was worse." Maniscalco answered "it's a violation of my First Amendment right, and I'm going to file a complaint about it." Maniscalco removed the button and left the office.

DiCostanzo testified that she addressed only those nurses who wore the "hands off" button. Specifically, she testified that, in early June, while the parties were "in the middle of negotiations" she saw nurses wearing the "hands off" button for the first time. She told a group of nurses having breakfast in the staff lounge who were wearing that button that she "did not want them wearing that in the patient care area. I respected what [you are] fighting for." At hearing, DiCostanzo stated that she asked them to remove their buttons in the lounge and they did so - "they took them off and there were no issues." She stated that although the staff lounge was not a patient care area, the nurses were on their break or they were walking in that area on their way to patient care areas. She conceded, however, that some nurses are at lunch in the lounge and some go there following their shift prior to leaving the hospital.

DiCostanzo also stated that she told other nurses, at other times, including in the patient recovery room, that she did not want them wearing the "hands off" button in patient care areas. The nurses removed the buttons at her direction. She did not ask them to remove any other buttons they wore. She did not recall seeing anyone wear the "patients before profits" button or any political pins being worn, or any members of other unions wearing pins.

DiCostanzo explained that the nurses could keep the buttons on their pocketbooks when they were in the cafeteria, but she did not want them to wear them "around the patients." She noted that her instruction was consistent with hospital policy as set forth in the "personal appearance policy" set forth below. She believed that the "hands off" button was "undermining the confidence of the patients…. and I was concerned for that. I want my patients to come to my area, and feel safe and have confidence in the staff that's caring for them."

Nurse Busch-Joss testified that the majority of her time at the Brentwood facility is spent in her office where she coordinates patient care and maintains records. She stated that in late June, 2009, she began wearing the "hands off" button on her right lapel. She also wears other buttons including a union pin that says "whatever it takes."

Busch-Joss wore the "hands off" button for about one week when, while on duty, she was leaving her office to go to the medical records department and stopped to talk to her supervisor, Cappellino. Apparently, Cappellino noticed the "hands off" button and said "something about you can't wear that. Human resources is telling us that you shouldn't have this on your uniform."

Busch-Joss removed the button and has not worn it thereafter. She told nurse Umlauf, the Union's grievance-chairperson at Brentwood what Cappellino said. Umlauf then asked Cappellino whether she told Busch-Joss to remove the button. Cappellino said "yes, you know we've gotten direction from human resources that you're not allowed to wear the buttons." Umlauf replied that such a direction "goes against the First Amendment." Cappellino repeated that "you can't wear the buttons … take them off." At hearing, Umlauf stated that Cappellino did

not specify in which hospital areas she could not wear the buttons.

Umlauf stated that, at that time, she was also wearing union buttons since she recalls Cappellino saying "I will tell you the same thing. You would have to take your button off also." Umlauf then removed her "respect" button, and told the other nurses to remove their buttons. Busch-Joss stated that Cappellino never said anything about the other pins she wore, including a pin which says "nysna," which she wears every day, and other, personal pins, such as those for breast awareness and multiple sclerosis.

Cappellino testified that she was speaking to Busch-Joss about an unrelated topic and noticed that she was wearing the "hands off" button. Cappellino told her "I did not want [you] to wear it in patient care areas," which, she stated, encompassed most of the facility except the cafeteria and break room. Cappellino did not tell her to remove the other pins she was wearing, such as the "respect" button. Cappellino stated that she told Umlauf that she directed Busch-Joss not to wear the button, and would report the matter to the director of human resources.

Nurses Maniscalco, Mucci and Umlauf stated that other employees who work at the Employer but are represented by another union, District 1199, wore union pins in about June 2009, one of which, an approximately three inch button, says "POP" which they believe means "pay our pension" or "protect our pension", and another which says "save our pension." Maniscalco stated that she was not aware that those workers were told to remove their buttons.

3. The Respondent's "Personal Appearance" Policy

The Respondent's "personal appearance" policy which was in effect during the period of time involved herein, states in relevant part:

> Employees may not wear buttons or stickers that are offensive to any ethnic group; that offend the sensibilities of patients, visitors or staff; that undermine patients' confidence; or that undermine the health system or its staff members' reputation.

Manager Mary Moreira identified the rule set forth above as one which was originally in the North Shore-LIJ Health System's manual, and when the Respondent was merged with that organization in about 2006, the rule became a part of the Employer's policy manual. Moreira stated that when policies are revised, they are sent to each manager who advises her staff of the new policy and tells them where they can find it, but she did not disseminate the above rule to the staff in her department.

Manager DiCostanzo testified that this policy was on-line on "healthport" on the North Shore-LIJ Health System website. She became aware of the personal appearance policy and examined it on-line *after* she told her nurses to stop wearing the "hands off" button. She did not know if that policy was disseminated to the employees of the Respondent, but she believed that her instruction to the nurses not to wear the "hands off" button in patient care areas was consistent with hospital policy as set forth in the personal appearance policy. Specifically, she stated that the button was undermining the confidence of the patients in the nursing staff.

Nurse Meyers stated that in her case management department, any written change in a policy or procedure is sent to all the employees who must sign a statement that they read it. She stated that she did not see the rule set forth above until it was shown to her at this hearing. Nurses Maniscalco and Meyers testified that they never received this rule or heard of it, and they were unaware of anyone being disciplined for a dress code violation.

Union agent Sommermeyer testified that during the last series of collective-bargaining negotiations, the Employer made no proposal concerning a dress code, and neither the expired collective-bargaining agreement nor the implemented final offer contains any reference to a dress code.

C. The Direction that Employees not Talk about Union Matters

The parties' collective-bargaining agreement which was in effect in June, 2009, states as follows:

> A duly authorized general representative of the Association [Union] may visit the Employer's premises, upon notification to the Director of Personnel, at a reasonable time, to discharge Association's duties as the employees' collective bargaining representative so long as the representative does not interfere with the work of the employees and the operation of the Hospital.

Union agent Sommermeyer testified that in May, 2009, during the period of time that bargaining was ongoing, she frequently met with nurses at the hospital. She visited the hospital about two to three times per week, or on occasion, every day. She also had many union meetings there with employees throughout the campaign, for which she was given space by the Employer.

Meyers, the clinical care coordinator and Union co-president, stated that, as a member of the negotiating committee, she spoke to the nurses about the progress of the 2009 negotiations. Whenever she entered a nursing unit on a patient care floor, the nurses who were on duty approached her for information on the contract talks. She also stated that supervisors, including her own supervisor Lucia Swan, and manager Moreira asked her, in patient care areas during their work time, about the status of the contract negotiations.

Meyers testified that in early June, 2009, while she was on her break, she visited the labor and delivery floor to inform the nurses about an upcoming Union meeting and the informational picket line. As she approached the nurses' station, about four or five nurses came towards her and asked about the status of the negotiations. Meyers stated that the nurses were on duty but the area was "very quiet" at the time, there being only one patient in the delivery room.

Meyers stated that after speaking to the nurses for about one minute, she heard manager Moreira "yell" from her office adjacent to the nurses' station, that "these nurses were not on their breaks, they needed to stop speaking to [you] and they couldn't be talking union business. I hear you talking union business. You're not on your breaks." Meyers and the nurses continued their discussion for about one more minute and then Meyers heard Moreira "yell" again "I still hear you speaking about union business. You're not on your breaks." Meyers believed that the nurses became "very nervous and intimidated" and said they had to stop speaking. They then left the area.

Meyers went to Moreira's office and told her that, since she was on her break, she had "every right" to speak to the nurses, stating that the nurses were not giving patient care, charting, or picking up doctors' orders. On cross examination, Meyers conceded that the nurses could have been performing other tasks since they were on duty.

Moreira testified that as she was entering the labor and delivery unit she saw Meyers standing at the nurses' station speaking with one nurse, and handing her flyers for Union meetings. As she entered her office, Moreira told Meyers: "Virginia, you know you're not supposed to be here at this time." Moreira went into her office and Meyers "continued to speak to my nurse regarding union matters." She then addressed Meyers, saying "my nurse is not on her break." Meyers replied that she [Meyers] was on her break. Moreira answered that she was not Meyers' manager and "wouldn't know that." The staff nurse left, and Meyers approached Moreira and asked for her name. Moreira conceded that, prior to that time, she never told Meyers to leave her unit.

Moreira conceded that Meyers typically comes to her unit and others to distribute and leave flyers and other information concerning upcoming Union meetings and events. Moreira testified that the Respondent has a "no-talking rule about Union matters in a patient area," but conceded that there is no broad rule prohibiting talking while working.

Meyers stated that before and after that incident she delivered flyers and spoke about contract negotiations with nurses who were at the nurses' station in that unit. She added that while working, the nurses discuss a wide range of issues such as family, politics, sports and shopping. In addition, during the negotiations, nurses visited other units to discuss personal matters with their colleagues and also distribute Girl Scout cookies and raffle tickets, and had not been told that they could not do so.

Meyers testified that, aside from this incident, she had never been prohibited from discussing any topic with the nurses, or told that she could not do so because the nurses were on duty. Meyers further added that other nurse managers saw her on many occasions speaking to nurses and giving them flyers while they were on duty without being reprimanded for doing so.

Nurse Maniscalco testified that in about mid-July, 2009, after the airplane carrying a Union banner about the negotiations flew over a baseball game, about five nurses, in a group gathered at the nurses' station, asked her questions about the event while she was on duty. Manager DiCostanzo approached and said "no, you can't discuss union business in a patient care area." Maniscalco stated that supervisors Tom Brando and Dan Governanti were present during the discussion and did not tell her to stop speaking to the nurses. Maniscalco stated that prior to this instruction by DiCostanzo she had never been told that she could not discuss union business while on duty in patient care areas.

Maniscalco stated that employees discuss a wide variety of topics while on duty in patient care areas, including politics, personal matters and family issues, but she never heard supervisors instruct them not to speak about such matters. In fact, she stated that supervisors Brando, DiCostanzo and Governanti discussed personal and family matters with her. She is not aware of any rule prohibiting talking in patient care areas. She stated that she and her manager Governanti spoke "extensively" about union matters in patient care areas while they were on duty during the entire period of the recent negotiations.

Union agent Sommermeyer testified that during the last series of collective-bargaining negotiations, the Employer made no proposal concerning a no-talking rule. Neither the expired collective-bargaining agreement nor the implemented final offer contained a rule relating to talking while on duty.

Analysis and Discussion

I. Prohibiting the Wearing of Union Buttons

The complaint alleges that the Respondent prohibited its employees from wearing union buttons in violation of Section 8(a)(1) of the Act. In determining whether that section of the Act is violated, the test is whether the Respondent's conduct reasonably tends to interfere with the free exercise of employee rights under the Act. It is not necessary to show that the Employer's actions were motivated by a desire to chill the exercise of Section 7 rights. *St. Luke's Hospital,* 314 NLRB 434, 435 fn. 4 (1994).

Negotiations toward a successor agreement had been ongoing for seven months when in April and May, 2009, the Employer proposed "significant give backs" in benefits. The Union then engaged in an aggressive, public campaign of protest against the Employer's proposals. In addition, the Union distributed a button bearing the message "hands off our benefits - NYSNA RNs" apparently in response, and in opposition to the Employer's proposals. Clearly, the buttons were issued and worn in an effort to encourage the employees to support the Union's bargaining position that employees' benefits should not be reduced, and constituted protected, concerted activity.

It is undisputed that the Respondent had never, until May, 2009, objected to its nurses wearing, throughout the Hospital and the Brentwood facility, including patient care areas, union buttons, personal pins, political pins and pins issued by the Employer. However, in May and June, 2009, the Employer told certain nurses that they could not wear the "hands off" button.

In *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803 (1945) the Supreme Court held that employees had a right to wear union buttons at work, and that "prohibitions against the wearing of insignia must fall as interferences with union organization…." 324 U.S. at 803. *Ohio Masonic Home,* 205 NLRB 357 (1973). However, hospitals "are not factories or mines or assembly plants" but are places where ailments are treated, and where patients need a "restful, uncluttered, relaxing and helpful atmosphere." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 509 (1978) (concurring opinion).

The validity of rules regarding union buttons and insignia in the hospital setting depends, in the first instance, upon whether the restriction is being applied to a patient care or a non patient care area of the facility.

Accordingly, the Board has held that a hospital may prohibit the wearing of union insignia in "immediate patient care areas" and that a rule banning buttons there is presumptively valid. *London Memorial Hospital,* 238 NLRB 704, 708 (1978). However, a rule prohibiting the wearing of buttons in non patient care areas is presumptively invalid, absent a showing by the employer of "special circumstances" - that banning the wearing of such buttons was "necessary to avoid disruption of health care operations or disturbance of patients." *NLRB v. Baptist Hospital*, 442 U.S. 773, 781 (1979).

The complaint specifically alleges six instances in which employees were prohibited from wearing union buttons by supervisors: DiCostanzo in May and June in the Hospital staff lounge, and in June, in DiCostanzo's office; Cappellino on two occasions in June at the Brentwood facility; and Joan Muller in June at the Hospital's main holding room.

I credit the testimony of nurses Busch-Joss, Maniscalco, Mucci, and Umlauf that they were told by supervisors, as set forth above, to remove the "hands off" button. Their testimony

was mutually corroborative about an undisputed matter – that nurses were told that they could not wear the "hands off" button. In addition, the three supervisors admitted asking the nurses to remove the buttons, believing that wearing them was prohibited.

DiCostanzo

DiCostanzo told nurse Mucci, as she was seated in the staff lounge having lunch, that she could not wear the "hands off" button "here in a patient care area." She also told Maniscalco who was in the lounge, that she could not wear those buttons in patient care areas, pointing to the "hands off" button. Finally, she told Maniscalco in her office, that she could not wear the button. Maniscalco had reported to DiCostanzo's office at the direction of her supervisor while she was performing a patient procedure, during which she wore the button.

Cappellino

Cappellino told nurse Busch-Joss, as she stepped out of her office, that she could not be wearing the "hands off" button. When Union grievance chairperson Umlauf questioned Cappellino's order, Cappellino told her to remove her button also.

Muller

Muller told Maniscalco in a patient care area that she was not supposed to be wearing the "hands off" button.

The first question is what areas of the hospital were off limits to the "hands off" button. The General Counsel argues that inasmuch as the nurses were told in non patient care areas that they could not wear the buttons, the Respondent prohibited them from wearing the buttons there. The Respondent argues that the prohibition extended only to patient care areas.

Nonpatient Care Areas

I find that DiCostanzo's directions to nurses Mucci and Maniscalco, in the staff lounge, that they could not wear the "hands off" button in patient care areas was presumptively invalid. The nurses were seated in the lounge eating or just finishing a meal, and were not in a patient care area. DiCostanzo told nurse Mucci that she could not wear the "hands off" button "here in a patient care area." She also told Maniscalco who was in the lounge, that she could not wear those buttons in patient care areas, pointing to the "hands off" button.

It is clear, and as conceded by DiCostanzo, the staff lounge is a non patient care area.

A prohibition of wearing union pins in non patient care areas must be justified by evidence that the rule is "necessary to avoid disruption of health care operations or disturbance of patients." *Mt. Clemens General Hospital*, 335 NLRB 48, 50 (2001), enf. 328 F.3rd 837, 846 (6th Cir. 2003), quoting *Beth Israel*, above, at 507. In other words, the Respondent bears the burden of showing "special circumstances" privileging its prohibition. *NLRB v. Baptist Hospital*, 442 U.S. 773, 781 (1979).

Here, as set forth above, there is no evidence that patients have been disturbed by the "hands off" button. Further, the language on the button did not disparage the Respondent's hospital nor is it alleged to be disloyal, recklessly made, maliciously false, vulgar or obscene. Rather, the statement on the button presents a "legitimate workplace concern" which is protected by Section 7 of the Act. *Sacred Heart Medical Center*, 353 NLRB No. 19, slip op. at 3,

(2008); *St. Luke's Hospital,* 314 NLRB 434, 435 (1994).

In addition, the nurses had historically worn union pins and other pins in all areas of the hospital without restriction.

I accordingly find that the Respondent has not proven that its prohibition on the wearing of the "hands off" button in non patient care areas was privileged by special circumstances. I therefore conclude that its banning of that button in non patient care areas violated the Act.

The Respondent argues that, even though the nurses were told in a non patient care area that they could not wear the button, the instruction was that they were prohibited from wearing the button in "patient care areas," and that therefore the direction, given in the lounge, that they should not wear the button, was presumptively valid. I do not agree. DiCostanzo testified that she told the nurses in the staff lounge to remove the button and they "took them off and there were no issues." Maniscalco immediately removed the button at DiCostanzo's direction. Thus, although the message may have been presumptively valid - "do not wear the button in patient care areas" - DiCostanzo demanded and obtained immediate compliance in a non patient care area.

DiCostanzo conceded that the staff lounge was not a patient care area, but sought to justify her demand by testifying that the nurses could be expected to exit the lounge and report to patient care areas. However, they had a right to wear the button as long as they were in the lounge, a non patient care area. By demanding that they remove the button in the lounge, DiCostanzo's direction was presumptively invalid.

Patient Care Areas

As set forth above, a hospital may prohibit the wearing of union insignia in "immediate patient care areas" and a rule banning buttons there is presumptively valid.

It is alleged that DiCostanzo's direction in her office to Maniscalco to remove the button violated the Act. Maniscalco had reported to DiCostanzo's office at the direction of her supervisor while she was performing a patient procedure, during which she wore the button. Clearly, DiCostanzo's direction to Maniscalco was that she should not have been wearing the button in a patient care area. As such, DiCostanzo's demand that Maniscalco remove the button was presumptively valid.

In addition, supervisor Cappellino told nurses Busch-Joss and Umlauf in a hallway outside her office that they could not wear the "hands off" button, and that they should remove them.

Counsel for the General Counsel attempted to portray Busch-Joss' office as a non patient care area, but a careful reading of the testimony shows the opposite. Busch-Joss testified that she "takes care of patients [who] have breast issues" by coordinating breast services, working in her office on the north side of the clinic in which she inputs data in her computer and writes notes. In addition to using the telephone, she also interviews patients who received abnormal results of a mammogram or sonogram, decides what services they need, and refers them to physicians or for further treatment such as follow-up tests. She stated that, in about June, 2009, less than a majority of her time was spent face-to-face with a patient, and at that time she did not see every patient. In contrast, director Cappellino testified that most of the Brentwood facility is a patient care area, with the exception of the cafeteria and break room.

The Supreme Court adopted the Board's finding that "the primary function of a hospital is patient care and that a tranquil atmosphere is essential to the carrying out of that function" and that solicitation in strictly patient care areas include "patients' rooms, operating rooms, and places where patients receive treatment, such as x-ray and therapy areas might be unsettling to the patients – particularly those who are seriously ill and thus need quiet and peace of mind." *Beth Israel,* above, at 495.

This testimony supports a finding that, although Busch-Joss did not see every patient, she saw many patients in her office where she interviewed them and determined what services they needed – based on such interviews.

The patients she interviewed received abnormal test results which required counseling and interviewing based upon which she made referrals for treatment. It is obvious that such patients would, upon being interviewed by Busch-Joss, be understandably upset and concerned about the necessity for further testing and referral.

Accordingly, the "tranquil atmosphere" emphasized by the Supreme Court must extend to Busch-Joss' office. In *Saint Vincent's Hospital*, 265 NLRB 38, 56 (1982), the judge, in a decision adopted by the Board, found that an intensive care unit conference room, not used for the treatment of patients, but in which physicians consulted with families concerning their relatives' conditions, and worsening changes in their conditions, was an immediate patient care area in which solicitation was lawfully banned. It was noted that the families "need a restful, uncluttered, relaxing and helpful atmosphere, rather than one remindful of the tensions of the marketplace, in addition to the tensions of the sick bed." Here, Busch-Joss' office was a place where she saw patients, not patients' relatives, and discussed with them their referral and testing options based upon the unfavorable test results they received. It is clear that based upon the services given to patients in Busch-Joss' office, where they are deserving of the same type of tranquil atmosphere as the patients' families in *Saint Vincent's*, that her office is a patient care area.

I accordingly find that the Respondent's supervisors advised nurses Maniscalco, Busch-Joss and Umlauf in patient care areas, that they could not wear the "hands off" button. Such a direction was presumptively valid. That finding does not end the inquiry, however.

In *Mt. Clemens*, above, the Board affirmed the judge's conclusion that the employer violated Section 8(a)(1) by instructing employees to remove buttons worn throughout the hospital that were designed to protest forced overtime. The buttons contained the letters FOT with a line through them. The employer defended its prohibition by claiming that patients might ask questions about the FOT button that would then instigate discussions between nurses and patients regarding the hospital's overtime policies. In finding the employer's action unlawful, the Board affirmed the judge's conclusion that, in these circumstances, the presumption of validity regarding application of the rule to patient care areas had been overcome. There was no evidence of claims or complaints about the button's allegedly disruptive nature from hospital administrators, patients or their families; there was no evidence that the FOT button had caused any patient-nurse dialog regarding its meaning; there was no disruption of patient care associated with nurses wearing the button; and the employer had previously allowed employees to wear union buttons that could be considered just as "controversial" as this one was.

As noted by the Sixth Circuit in enforcing the Board's order, the hospital's failure to object to the nurses' wearing of similar buttons while caring for patients undercuts the hospital's contention that wearing the buttons would interfere with patient care. 328 F.3rd at 848, citing *London Memorial Hospital*, 238 NLRB 704, 709 (1978), in which the Board noted that a

hospital's historically sporadic enforcement of a rule prohibiting all insignia not of a professional nature discredits the hospital's contention that such insignia critically disrupts patient care.

The same factors considered in *Mt. Clemens* are present here. Thus, the Respondent historically did not prohibit the wearing of union buttons in all areas of the hospital, including patient care areas, there were no complaints by patients or their families that the "hands off" button was disruptive of hospital operations or patient care, and other buttons worn by the nurses could be deemed equally controversial. Thus, as noted above, nurse Maniscalco told director DiCostanzo that she believed that the "patients before profits" button was more inflammatory than the "hands off" button, and it appears that it was at least equally controversial, in that the "patients before profits" button implied that the Respondent placed its alleged concern for profits ahead of its patients' welfare. In addition, the Respondent had no objection to the wearing of political buttons in which the wearer announced her support of one of the presidential candidates. Those buttons may also be considered controversial since they may engender discussion concerning the political beliefs of the wearer and the patient.

In *Sacred Heart Medical Center*, 353 NLRB No. 19 (2008), the Board, on remand from the Ninth Circuit Court of Appeals, affirmed the judge's decision which found that the employer violated the Act by ordering its nurses to stop wearing a button "RNs Demand Safe Staffing" "where they may encounter patients or family members." The employer prohibited those buttons because it believed that the button's message disparaged the employer by giving the impression that it does not have safe staffing, and that patients and family members "may fear" that the hospital is unable to provide adequate care.

The administrative law judge found that the prohibition violated the Act. The judge noted that prior to the ban, the employer "did not historically limit union insignia in patient care areas. Thus, the 'special circumstances' analysis applied in many cases where such patient care area bans are present, is inapplicable," citing *Evergreen Nursing Home*, 198 NLRB 775, 779 (1972), where union buttons were lawfully prohibited by the employer which had long maintained a strict rule limiting all-white uniform adornment to name tag and professional affiliation only.

Here, too, the Respondent did not historically limit union insignia in patient care areas, thus undermining the Respondent's "special circumstances" argument.

The Respondent further argues that its conduct in banning the "hands off" button in patient care areas was permissible inasmuch as it prohibited only that button and permitted the wearing of other union buttons. The Board addressed this argument in *Holladay Park Hospital*, 262 NLRB 278, 279 (1982), in which it noted that it is "irrelevant that the respondent also permitted the employees to wear another union insignia which it deemed more 'professional.'" Here, the prohibition on wearing the "hands off" button was impermissible regardless of the number and types of other buttons not deemed objectionable by the Employer.

I accordingly find and conclude that the presumption of validity of the Respondent's prohibition of the "hands off" button in patient care areas has been overcome, and that its prohibition on wearing the "hands off" button violated Section 8(a)(1) of the Act.

II. The Imposition of a Dress Code

The complaint alleges that the subject of wearing Union buttons is a mandatory subject for the purposes of collective bargaining and that, by prohibiting its employees from wearing union buttons, the Respondent imposed a dress code without prior notice to the Union, and without affording it an opportunity to bargain regarding such actions in violation of Section

8(a)(5) of the Act.

The requirement that nurses not wear the "hands off" button represented a significant change from past practice. Thus, for a number of years and until May, 2009, the Respondent did not object to its nurses wearing, in all areas of the hospital including patient care areas, numerous buttons, including buttons bearing a Union message, pins representing certain causes including breast cancer awareness, and those supporting the candidates for president. Beginning in May, 2009, the Respondent directed that its nurses not wear the "hands off" button.

It is well settled that a dress code is a mandatory subject of bargaining, and that unilaterally imposing a new dress code or revising an existing one requires that the union which represents the unit employees be given notice of the change and an opportunity to bargain concerning the change. A failure to do so violates the Act. *Transportation Enterprises, Inc.,* 240 NLRB 551, 560 (1979).

In *Holladay Park Hospital*, above, at 279-280, the Board found that the employer violated Section 8(a)(5) of the Act by changing its past practice by prohibiting its nurses form wearing union insignia without notifying or bargaining with the union before unilaterally instituting that change in past practice.

Here, similarly, the Employer had a long standing past practice of not objecting to its nurses wearing Union buttons of all types. Its prohibition of the "hands off" button constituted a change in its past practice and was clearly done without notification to the Union or offering to bargain with it concerning that change. I therefore find that the Respondent's banning of the "hands off" button violated Section 8(a)(5) of the Act.

Certain limited testimony was given concerning the Respondent's "personal appearance" policy which was in effect when the "hands off" buttons were banned. Essentially, as set forth above, it prohibited buttons which "undermine patients' confidence." The policy was not cited as a reason for the banning of the buttons and supervisor DiCostanzo became aware of the policy only after directing the nurses that they could not wear the buttons in patient care areas. Accordingly, it cannot be found that the personal appearance policy was the basis for the order that the buttons not be worn. Further, that policy was not alleged as a violation, the issue was not fully litigated, and the General Counsel opposed the written policy's receipt in evidence on the ground that it was irrelevant.[5] I accordingly make no findings concerning the validity of the Respondent's personal appearance policy.

III. Prohibiting Employees From Talking About Union Matters

The complaint alleges that in June and July, 2009, supervisors DiCostanzo and Moreira directed employees not to talk about Union affairs.[6]

As set forth above, nurses Maniscalco and Meyers routinely spoke to other nurses and supervisors about matters concerning the ongoing negotiations. Such discussions occurred

[5] See footnote 2, above.

[6] The record contains testimony that nurse Maniscalco entered the hospital while off duty in late summer, 2009, spoke to nurses, was reprimanded for doing so by supervisor Muller and escorted from the building. That incident is not alleged in the complaint. Accordingly, it will not be discussed here and I make no findings concerning it.

while the nurses were on duty in patient care areas. In fact, Meyers gave uncontradicted testimony that manager Moreira asked her, in patient care areas during their work time, about the status of the negotiations. In fact, Moreira conceded that Meyers routinely visited her unit and others to distribute and leave flyers and other information concerning the Union.

In addition, nurses had frequently spoken with their co-workers and supervisors, while on duty in patient care areas about many matters including family, sports and politics without restriction. Prior to June, 2009, they were not told that they could not talk about Union matters while on duty or in patient care areas. Meyers stated that nurses visited other units to discuss personal matters with their colleagues and also distribute Girl Scout cookies and raffle tickets, and had not been told that they could not do so.

As set forth above, in June, 2009, for the first time, when nurse Meyers was updating nurses on the status of negotiations, Moreira told her that she could not do so because the nurses were on duty. Similarly, nurse Maniscalco was told, for the first time in July, 2009, by manager DiCostanzo that she could not discuss union business in a patient care area. At that time, she was speaking to a group of nurses and two supervisors. Both conversations took place at the nurses' stations.

I cannot credit Moreira's testimony that the Hospital has a "no-talking rule about Union matters in a patient area" since there was no evidence of any such rule – oral or written. Indeed, the parties' contract permits a Union representative to meet with employees in a manner that does not interfere with the work of the employees and the operation of the Hospital." That provision does not prohibit talking about Union matters on work time or in patient care areas, or at the nurses' stations. Moreover, there is no evidence of any other enforcement of a rule against talking while working.

The Respondent asserts that its supervisors' prohibition of talking about the Union in patient care areas is valid. Here, however, both conversations took place at the nurses' stations. The Board has held that it "has never extended its listing of what it considers to be immediate patient care to include nursing stations." *Rocky Mountain Hospital*, 289 NLRB 1347, 1360 (1988); *Baptist Medical Centre/Health Midwest,* 338 NLRB 346, 362 (2002).

In *Jensen Enterprises, Inc.*, 339 NLRB 877, 888 (2003), the Board stated:

> It is settled law that an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated or connected with their work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work….

As set forth above, nurses and supervisors routinely speak about non-work matters while on duty throughout the hospital, including at the nurses' stations and in patient care areas. Here, it is clear that although the Respondent has prohibited employees from speaking about the Union while they are working, it has not also prohibited them from speaking about non-work subjects while they are working.

In *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 53 (2006), the Board, citing *Jensen,* above, held that the hospital's supervisor telling an employee at the nurses' station that a conversation about an upcoming union meeting "does not belong here" violated the Act. The

Board noted that the employer permitted social conversations during working time at the nurses' station, and that the supervisor's comment constituted a discriminatory prohibition on discussing the union. Similarly, here, nurse Meyers stated that she has historically, before and after the incident with Moreira, spoke with nurses who were at the nurses' station about contract negotiations. She added that while working, the nurses and supervisors discuss a wide range of issues such as family, politics, sports and shopping.

See *St. Margaret Mercy Healthcare Centers,* 350 NLRB 203, 203-204 (2007), enf. 519 F.3rd 373 (7th Cir. 2008), where the Board found that disciplining a nurse for soliciting a colleague to sign a union card at a nurses' station was unlawful. The Board noted that such solicitation at nurses' stations was a common practice, including solicitation for Girl Scout cookies and other social occasions, and that management was aware of and participated in it with no discipline being issued for such conduct.

I accordingly find and conclude that prohibiting employees from speaking about the Union while permitting non-work related conversations violated Section 8(a)(1) of the Act. *Stevens Construction Corp,* 350 NLRB 132, 134 (2007)*; Sam's Club,* 349 NLRB 1007, 1008-1009 (2007).

St. Mary's Hospital of Blue Springs, 346 NLRB 776 (2006), relied on by the Respondent, is distinguishable. In that case, Cunningham, an employee union supporter phoned a co-worker, Burlison, while Burlison was at work in the hospital and asked him to sign a union card. Burlison said that he did not want to discuss the subject while working and hung up. A supervisor told Cunningham not to call the nurses and talk about the union. The Board found no violation because the supervisor's reprimand "did not constitute unlawful restrictions on employees to solicit union support in the workplace." It was noted that Cunningham interrupted Burlison's work, the reprimand was directed to Cunningham, and that Burlison was an unwilling participant in the conversation.

Here, in contrast, there was no evidence that the nurses' work was interrupted. Although Meyers conceded that the nurses could have been performing other tasks since they were on duty, there was no evidence that they were. In fact, Meyers stated that the nurses were not giving patient care, charting, or picking up doctors' orders at the time they spoke. In addition, the Employer's direction constituted an unlawful, disparate restriction on employees right to speak with their co-workers about Union matters.

Conclusions of Law

1. By prohibiting its employees from wearing a union button bearing the message "hands off our benefits", the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By prohibiting its employees from wearing a union button bearing the message "hands off our benefits", the Respondent has imposed a dress code upon its employees, and engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

3. By prohibiting its employees from wearing a union button bearing the message "hands off our benefits," and by doing so, imposing a dress code upon its employees without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of

Section 8(a)(1) and (5) of the Act.

4. By directing its employees not to talk about Union matters while allowing other nonwork-related discussions by employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Southside Hospital, Bay Shore, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith, by failing and refusing to bargain regarding prohibiting its employees from wearing union buttons, and, by doing so, imposing a dress code, with the New York State Nurses Association as the exclusive collective-bargaining representative of the employees in the following unit:

> Each full-time, part-time and per diem employee, licensed or otherwise lawfully entitled to practice as a registered professional nurse employed by Southside Hospital in the titles of Staff Nurse, Assistant Head Nurse, Head Nurse, Nurse Anesthetist, Staff Development Educator/Instructor, Nurse Clinician, Clinical Care Coordinator, and Infection Control Nurse, including employees in these titles at the Brentwood and Central Islip Family Health Centers, excluding the Director of Nursing, the Director of Staff Development, Assistant Director of Nursing, Nurse Manager, Assistant Nurse Manager, Supervisors, Assistant Supervisors or temporary employees as defined herein and all other job classifications as provided in Section 4.05.

(b) Prohibiting its employees from wearing a union button bearing the message “hands off our benefits.”

(c) Imposing a dress code upon its employees by prohibiting them from wearing a union button bearing the message “hands off our benefits.”

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Directing its employees not to talk about Union matters while allowing other nonwork-related discussions by employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the New York State Nurses Association as the exclusive-collective bargaining representative of the unit employees concerning the wearing of union buttons by its employees, and its imposition of a dress code by prohibiting the wearing of union buttons.

(b) Within 14 days after service by the Region, post at its facilities in Bay Shore and Brentwood, New York, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 3, 2010.

_____
Steven Davis
Administrative Law Judge

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively and in good faith, by failing and refusing to bargain regarding prohibiting our employees from wearing union buttons, and, by doing so, imposing a dress code, with the New York State Nurses Association as the exclusive collective-bargaining representative of the employees in the following unit:

> Each full-time, part-time and per diem employee, licensed or otherwise lawfully entitled to practice as a registered professional nurse employed by Southside Hospital in the titles of Staff Nurse, Assistant Head Nurse, Head Nurse, Nurse Anesthetist, Staff Development Educator/Instructor, Nurse Clinician, Clinical Care Coordinator, and Infection Control Nurse, including employees in these titles at the Brentwood and Central Islip Family Health Centers, excluding the Director of Nursing, the Director of Staff Development, Assistant Director of Nursing, Nurse Manager, Assistant Nurse Manager, Supervisors, Assistant Supervisors or temporary employees as defined herein and all other job classifications as provided in Section 4.05.

WE WILL NOT prohibit our employees from wearing a union button bearing the message “hands off our benefits.”

WE WILL NOT impose a dress code upon our employees by prohibiting them from wearing a union button bearing the message “hands off our benefits.”

WE WILL NOT direct our employees not to talk about Union matters while allowing other nonwork-related discussions by employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the New York State Nurses Association as the exclusive-collective bargaining representative of our employees concerning the wearing of union buttons by our employees, and our imposition of a dress code by prohibiting the wearing of union buttons.

SOUTHSIDE HOSPITAL

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center, Jay Street and Myrtle Avenue, Suite 5100

Brooklyn, New York 11201-3838

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.